IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1346 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE KSHITIJ R.VYAS

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BASIRKHAN ABDUL RAZAK PATHAN - Petitioner(s)

Versus

BARODA MUNICIPAL CORPORATION & 1 - Respondent(s)

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Appearance :

MR NK MAJMUDAR for Petitioner(s) : 1,
MR PRANAV G DESAI for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE KSHITIJ R.VYAS

and

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 20/12/2005

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA)

1. Rule. Mr. Desai wavies service of rule on behalf of the respondents.

2. The petitioner's grievance is that his land is situated in Baroda Kasba bearing Revenue Survey No.360/2.1, which also bears City Survey Nos.799 to 816 and 817 paiki, admeasuring about 5250 Sq. ft., which was formerly being used for dwelling as well as business purpose. Now it has been acquired for the purpose of widening the road. It is the say of the petitioner that, in fact the petitioner voluntarily handed over the possession of the said land to the respondent Corporation since the petitioner was assured that he would be given alternative land against the acquisition. It is the say of the petitioner that several other persons who were similarly situated had also been assured by the respondent Corporation for the allotment of the alternative land. The main grievance of the petitioner is that despite the fact that the Resolution to allot alternative land has already been passed, the petitioner has neither been given the alternative land nor paid the compensation for the land acquired for widening the road by the respondent Corporation. His further grievance is that other similarly situated persons have been allotted the alternative land which is to the extent of 70% of the original land held by them, but the petitioner has not been given any land nor paid any compensation. Mr. N.K. Majmudar learned advocate appearing for the petitioner has submitted that the action of the respondent Corporation is not only high handed, but discriminatory also. He has further submitted that even if the allotment of alternative land is not possible, the petitioner be at least paid compensation for the land acquired by the respondent Corporation. As against that Mr. Desai learned advocate appearing for the respondent Corporation has submitted that the Resolution for allotment of the alternative land has been disapproved by the General Body and the allotment of alternative land is not possible. He has further submitted that now the petitioner is required to be given compensation *in lieu* of the allotment of land. He has further submitted that because the premises of the petitioner are having tenants, there is some delay caused in making the payment of

compensation. The same will be made to him shortly.

3. Having considered the aforesaid facts, and having heard the learned counsel for the respective parties, it clearly appears to us that gross injustice is caused to the petitioner. When others have been alloted alternative land, it was incumbent upon for the respondent Corporation to fulfill its assurance by allotting the land to the petitioner. The respondent Corporation has not showed any cause by filing counter, why such benefit could not be given to the petitioner. We have seen the record of the petition. Mr. Majmudar has drawn our attention to the communication addressed by the officer of the Land and Property (Acquisition) Department respondent Corporation dated Nil November, 2003, which is despatched on 5th December, 2003 to the petitioner, whereby he is intimated that on account of the General Body rejecting his request with regard to allotment of the alternative land, it cannot be made available to him. In view of the Resolution of the General Body dated 12th November, 2003, it appears that at this stage it will not be possible for the respondent Corporation to allot alternative land to the petitioner. Even Mr. Majmudar has not insisted upon it and in the alternative has submitted that if allotment is not possible, direction to pay compensation can be given. Be that as it may, so far as the question with regard to payment of compensation is concerned, there is no valid reason for delaying the payment of compensation. Since the decision not to allot the land was taken by the General Body, the Corporation could have paid the compensation to the petitioner forthwith, but the same has not been done till this date. Why it has not been is not explained by the respondent Corporation. Mr. Desai of course, tried to submit that the delay has been caused on account of the tenants in the premises, but we fail to appreciate how the tenants would have created any difficulty in the way of the respondent Corporation in making the payment of compensation. In view of the

aforesaid, we, at the stage of admission, have heard this matter finally and now decide that petitioner's prayer for payment of compensation can be granted. Though strictly speaking, when the prayer for grant of compensation does not appear in the petition ordinarily it cannot be granted, but considering the stand taken by the learned advocates for the petitioner as well as the respondents which is in consonance with petitioner's request of payment of compensation and also keeping in view the facts and circumstances of the case, there is no difficulty in giving such direction to the respondent Corporation. We, therefore, direct the respondent Corporation to pay the compensation to the petitioner under the provisions of Section 216 of the Bombay Provincial Municipal Corporations Act, as early as possible and in any case, not later than 30th January, 2006. On the amount of compensation, we also direct the respondent Corporation to pay the interest at the prevailing rate from 9th March, 1999, till the date of payment.

4. In view of the same, the petition is allowed to the aforesaid extent. Rule is made absolute to the extent stated above.

[Kshitij R. Vyas, J.]

[Akshay H. Mehta, J.]

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